

CONTRACT

The Parties to this Contract are the State of Illinois acting through the undersigned Agency/Buyer (collectively the State) and the Vendor. The Contract consists of this signature page, the following pages detailing the contents described below, and any attachments identified on these pages.

1. TERM AND TERMINATION
2. DESCRIPTION OF SUPPLIES / SERVICES
3. PRICING
4. STANDARD TERMS AND CONDITIONS
5. CERTIFICATIONS AND CONFLICTS
6. SUPPLEMENTAL PROVISIONS

In consideration of the mutual covenants and agreements contained in this Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the terms and conditions set forth herein and have caused this Contract to be executed by their duly authorized representatives on the dates shown below.

VENDOR(show name) Boston Pacific Company, Inc.Signature Craig R. RoachPrinted Name Craig R. RoachTitle President Date September 19, 2008Address 1100 New York Avenue NW, Suite 490 EastWashington, DC 20005Phone (202) 296-5520 Fax (202) 296-5531E-mail croach@bostonpacific.comDept. of Human Rights Public Contract # N/A**STATE OF ILLINOIS**Illinois Commerce CommissionSignature [Signature]Printed Name Tim AndersonTitle Executive Director Date 9/25/08Signature Mary A. StephensonPrinted Name Mary StephensonTitle General Counsel Date 9/23/08Signature Kenneth E. HundrieserPrinted Name Kenneth HundrieserTitle State Purchasing Officer Date 09/23/2008STATE USE ONLY - Procurement Method (IFB, RFP, Small, etc): RFPAward Code: BIPB Publication Date: 9/11/08IPB Ref. # 22015390Subcontractor Utilization? NSubcontractor Disclosure? N(Fiscal Use Only) Obligation # JACOBS

1. **TERM AND TERMINATION**

1.1 TERM OF THIS CONTRACT

The initial terms of the contract will be from the final date of execution to June 30, 2011, which includes State fiscal years (FY) 2009, 2010, and 2011.

1.2 RENEWAL

This Contract may not be renewed.

1.3 TERMINATION FOR CAUSE

The State may terminate this Contract, in whole or in part, immediately upon notice to the Vendor if it is determined that the actions, or failure to act, of the Vendor, its agents, employees or subcontractors have caused, or reasonably could cause jeopardy to health, safety, or property. If Vendor fails to perform to the State's satisfaction any material requirement of this Contract or is in violation of a material provision of this Contract, the State shall provide written notice to the Vendor requesting that the breach or noncompliance be remedied within the period of time specified in the State's written notice. If the breach or noncompliance is not remedied by that date the State may either: (a) immediately terminate the Contract without additional written notice or, (b) enforce the terms and conditions of the Contract, and in either event seek any available legal or equitable remedies and damages.

1.4 TERMINATION FOR CONVENIENCE

Following thirty (30) days written notice, the State may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Vendor. Following any such termination for convenience, the Vendor shall be entitled to compensation upon submission of invoices and proof of claim for services provided under this Contract up to and including the date of termination.

2. DESCRIPTION OF SUPPLIES AND SERVICES

2.1 NEED FOR SUPPLIES AND/OR SERVICES

Section 16-111.5 of Illinois Public Utilities Act specifies an annual process for procuring wholesale electricity for resale to the retail customers of Commonwealth Edison Company ("ComEd") and the three Ameren utilities doing business in Illinois (Ameren-IP, Ameren-CIPS, and Ameren-CILCO, collectively "Ameren"). The procurement process itself shall be managed by a procurement administrator, hired by the Illinois Power Agency. However, Section 16-111.5(c) requires the Illinois Commerce Commission to retain a "procurement monitor."

2.2 GOALS AND OBJECTIVES

The Agency's goal is to contract with a Vendor to act as the procurement monitor for the next three annual planning cycles.

2.3 SUPPLIES AND/OR SERVICES REQUIRED

2.3.1 Project Manager and Procurement Administrator.

2.3.1.1 Agency Project Manager shall be Richard J. Zuraski, 527 East Capitol Avenue, Springfield, IL 62701, phone (217) 785-4150, or other person so designated by the Agency. Use of the term "Staff" within this Notice of Procurement Opportunity refers to Agency Project Manager and other Agency personnel who shall have a direct interest in this project. Where any dispute should arise concerning this project, Agency Project Manager shall make a final determination over any such disputed matters.

2.3.1.2 The Illinois Power Agency shall provide a Procurement Administrator.

2.3.2 Vendor shall attend Agency briefing sessions and agenda meetings as deemed necessary by Staff.

2.3.3 Vendor shall be an independent contractor for all purposes, except that Vendor and all persons who perform work under this Contract will function as an extension of the Agency Staff for purposes of Sections 5-108 and 10-107 of the Public Utilities Act [220 ILCS 5/5-108 and 10-107]. Supplies provided and/or services performed pursuant to this Contract are not rendered as an employee of the Agency or of the State of Illinois. Amounts paid pursuant to this Contract do not constitute compensation paid to an employee.

2.3.4 Vendor shall acquire or maintain, at its expense, insurance that is appropriate in type and amount to cover its activities.

2.3.5 Upon completion of this engagement, Vendor shall maintain the work papers it has prepared in the course of performing its obligations under the Contract for a period of no less than three years from the date of final payment under the Contract, or until all litigation, if any, related to this project is completed, whichever event occurs later. Vendor shall make such work papers available to the Commission and its Staff as requested or directed by the Commission, its Executive Director, or his or her designee. This obligation shall survive termination of the Contract.

2.3.6 As a result of information discerned within the duties described in Section 2, and for a period of three years after completion of this Contract, Vendor shall provide a witness or witnesses who can explain and support the investigation findings and recommendations in written testimony and under cross-examination in a formal Agency proceeding, and who can provide expert assistance to the Agency, its Staff, and/or Agency counsel, in all matters relating to such a proceeding, including discovery and the preparation of pleadings, briefs and other legal documents:

2.3.6.1 If such testimony is required, Agency and Vendor agree to enter into good faith negotiations for a separate agreement for the services described in this subparagraph.

2.3.6.2 The hourly fees charged by Vendor under such agreement shall be at the then current hourly rates, provided that such rates shall be no greater than the fees charged for the same individual under this Contract plus a reasonable adjustment for inflation.

2.3.6.3 Vendor will sign, on the advice of Agency counsel, and honor protective orders in the formal Agency proceeding.

2.3.7 Changes to the Vendor's staff (or others who would perform work) must be approved by the Agency Project Manager after review of any necessary revisions to Vendor's Staffing Specifications supplied pursuant to Section 2.5.

2.3.8 Vendor's staff (or others who would perform work) shall sign, on the advice of Agency counsel, a confidentiality agreement with the utilities and the procurement administrator.

2.3.9 Vendor shall, at the beginning of the engagement (i.e. within five business days of contract execution), develop and submit a new work plan to Staff for approval. Throughout the engagement, Vendor shall revise the work plan and submit to Staff for approval as required by Staff. The work plan must provide for active participation and coordination with the Staff and the procurement administrator. The work plan shall include steps to meet the goals and objectives of the Agency specified in Section 2.2 and the Agency scope defined by Sections 2.3, 2.4, and 2.9. Vendor shall include in their work plan response, an estimate of the hours required for each functional area and work step for each Vendor position (e.g. manager, consultant, analyst, etc.). The focus of the work-plan is to function as a project management tool to assure Staff that Vendor has an adequate understanding of the requirements of the contract and can allocate

resources reasonably to meet the requirements of the contract as well as provide Staff with appropriate regular performance benchmarks.

2.3.10 Perform those duties required of the procurement monitor by Section 16-111.5(c)(2) of the Illinois Public Utilities Act, which states:

- (i) monitor interactions among the procurement administrator, suppliers, and utility;
- (ii) monitor and report to the Commission on the progress of the procurement process;
- (iii) provide an independent confidential report to the Commission regarding the results of the procurement event;
- (iv) assess compliance with the procurement plans approved by the Commission for each utility that on December 31, 2005 provided electric service to a least 100,000 customers in Illinois;
- (v) preserve the confidentiality of supplier and bidding information in a manner consistent with all applicable laws, rules, regulations, and tariffs;
- (vi) provide expert advice to the Commission and consult with the procurement administrator regarding issues related to procurement process design, rules, protocols, and policy-related matters; and
- (vii) consult with the procurement administrator regarding the development and use of benchmark criteria, standard form contracts, credit policies, and bid documents.

2.3.11 Perform those duties required of the procurement monitor by Section 16-111.5(e)(3) of the Illinois Public Utilities Act, "Establishment of a market-based price benchmark," which states:

As part of the development of the procurement process, the procurement administrator, in consultation with the Commission staff, [Illinois Power] Agency staff, and the procurement monitor, shall establish benchmarks for evaluating the final prices in the contracts for each of the products that will be procured through the procurement process. The benchmarks shall be based on price data for similar products for the same delivery period and same delivery hub, or other delivery hubs after adjusting for that difference. The price benchmarks may also be adjusted to take into account differences between the information reflected in the underlying data sources and the specific products and procurement process being used to procure power for the Illinois utilities. The benchmarks shall be confidential but shall be provided to, and will be subject to Commission review and approval, prior to a procurement event.

2.3.12 Perform those duties required of the procurement monitor by Section 16-111.5(e)(5)(ii) of the Illinois Public Utilities Act, which states:

Failure of the procurement process to fully meet the expected load requirement: If the procurement process fails to fully meet the expected load requirement due to insufficient supplier participation or due to a Commission rejection of the procurement results, the procurement administrator, the procurement monitor, and the Commission staff shall meet within 10 days to analyze potential causes of low supplier interest or causes for the Commission decision. If changes are identified that would likely result in increased supplier participation, or that would address concerns causing the Commission to reject the results of the prior procurement event, the procurement administrator may implement those changes and rerun the request for proposals process according to a schedule determined by those parties and consistent with Section 1-75 of the Illinois Power Agency Act and this subsection. In any event, a new request for proposals process shall be implemented by the procurement administrator within 90 days after the determination that the procurement process has failed to fully meet the expected load requirement.

2.3.13 Perform those duties required of the procurement monitor by Section 16-111.5(f) of the Illinois Public Utilities Act, which states:

Within 2 business days after opening the sealed bids, the procurement administrator shall submit a confidential report to the Commission. The report shall contain the results of the bidding for each of the products along with the procurement administrator's recommendation for the acceptance and rejection of bids based on the price benchmark criteria and other factors observed in the process. The procurement monitor also shall submit a confidential report to the Commission within 2 business days after opening the sealed bids. The report shall contain the procurement monitor's assessment of bidder behavior in the process as well as an assessment of the procurement administrator's compliance with the procurement process and rules. The Commission shall review the confidential reports submitted by the procurement administrator and procurement monitor, and shall accept or reject the recommendations of the procurement administrator within 2 business days after receipt of the reports.

2.3.14 Perform those duties required of the procurement monitor by Section 16-111.5(h) of the Illinois Public Utilities Act, which states:

The names of the successful bidders and the load weighted average of the winning bid prices for each contract type and for each contract term shall be made available to the public at the time of Commission approval of a procurement event. The Commission, the procurement monitor, the procurement administrator, the Illinois Power Agency, and all

participants in the procurement process shall maintain the confidentiality of all other supplier and bidding information in a manner consistent with all applicable laws, rules, regulations, and tariffs. Confidential information, including the confidential reports submitted by the procurement administrator and procurement monitor pursuant to Section 16-111.5(f), shall not be made publicly available and shall not be discoverable by any party in any proceeding, absent a compelling demonstration of need, nor shall those reports be admissible in any proceeding other than one for law enforcement purposes.

- 2.3.15** Provide expert advice to the Commission in the context of Section 16-111.5(o) of the Illinois Public Utilities Act, which states:

On or before June 1 of each year, the Commission shall hold an informal hearing for the purpose of receiving comments on the prior year's procurement process and any recommendations for change.

- 2.3.16** Provide the Staff with reports as shown in Section 2.4, below.

2.4 MILESTONES AND DELIVERABLES

Consistent with the duties announced in Section 2.3 of the Contract, "Supplies and/or Services Required," the following tentative milestones are provided:

Milestones and Deliverables	Expected Timeframe
Vendor begins assignment on date of contract execution.	
Vendor submits revised work plan. Define deliverables dates to meet goals and objectives of contract.	Within 5 business days (of date of contract execution).
Vendor will consult with the procurement administrator, Commission Staff, and the Illinois Power Agency, regarding the development and use of benchmark criteria, standard form contracts, credit policies, and bid documents, as specified in Section 16-111.5 (c)(2) and (e)(3) of the Public Utilities Act.	As needed and feasible, between the date that the Commission approves a procurement plan through the last week prior to the opening of sealed bids.
Vendor will provide a brief written status report to the Commission on the progress of the procurement process, as specified in Section 16-111.5 (c)(2) of the Public Utilities Act.	By 5 PM Central Prevailing Time of second business day of each week, between the date that the Commission approves a procurement plan through the last week prior to the opening of sealed bids.
Vendor will provide an independent confidential report to the Commission regarding the results of each procurement event, as specified in Section 16-111.5(f) of the Illinois Public Utilities Act. Note: In FY 2008, there were five separate procurement events (ComEd energy, Ameren energy, Ameren capacity, ComEd RECs, and Ameren RECs).	Within 2 business days after opening the sealed bids.
Vendor will make at least one of the authors of the independent confidential report available to provide an oral briefing to the Commissioners following each procurement event.	Within 2 business days following the Commission's receipt of the report.
Vendor will meet with the procurement administrator and Commission Staff to analyze potential causes of low supplier interest or causes for a Commission decision to reject the results of each procurement event, as specified in Section 16-111.5(e)(5)(ii) of the Illinois Public Utilities Act.	Within 10 days of a Commission decision pertaining to acceptance or rejection of the procurement event.
As specified in Section 16-111.5(o) of the Public Utilities Act, the Commission, on or before June 1 of each year, shall hold an informal hearing for the purpose of receiving comments on the prior year's procurement process and any recommendations for change. In this informal hearing, VENDOR will provide, in written and/or oral form, as required by AGENCY, expert advice regarding issues related to procurement process design, rules, protocols, and policy-related matters, as specified in Section 16-111.5 (c)(2) of the Public Utilities Act.	On or before June 1, 2009, June 1, 2010, and June 1, 2011, as required by AGENCY.
End of Vendor engagement.	June 30, 2011

2.5 VENDOR / STAFF SPECIFICATIONS

Vendor must adhere to the staffing specifications provided in their proposal for the solicitation of this Contract, which demonstrated the education, experience and technical ability necessary to perform this contract. Such education, experience and technical ability included the following:

- 2.5.1 Education:** The Vendor Engagement Director shall possess an advanced degree in business, economics, or mathematics. Additional degrees and/or license certifications in engineering, business, mathematics, economics or management would be a plus. All Vendor staff working on this project shall have educational backgrounds appropriate to the areas/issues they will be assigned and are expected to include advanced degrees in economics and/or mathematics with areas of study that included statistics and/or game theory.
- 2.5.2 Experience:** The Vendor Engagement Director shall have relevant experience managing projects in the utility industry or regulatory environments. Vendor staff shall have relevant electric industry experience. Experience in progressive positions of responsibility working for an entity either participating in or monitoring electric power markets is preferred.
- 2.5.3 Technical/Analytical Ability:** Vendor staff must have the ability to investigate the procurement process, its participants and market, understand and analyze the information gathered or observed, identify bidding patterns consistent with collusion, reach informed conclusions regarding the efficiency and competitiveness of the procurement process and results, and effectively communicate both verbally and in writing. An advanced understanding of game theory, economics, statistics, and the electric power market will be necessary.

2.6 WHERE SERVICES ARE TO BE PERFORMED

- 2.6.1** During the course of this Contract Vendor may need to spend some time at Agency's office in Springfield, IL as well as Agency's office in Chicago IL due to Agency meetings or the need to provide reports. If necessary, office space will be provided by Agency.
- 2.6.2 Work Location Disclosure:** Vendor shall disclose the location where the services required shall be performed. If at multiple locations, the known or anticipated value of the services performed at each location shall be identified. This information and economic impact on Illinois and its residents may be considered in the evaluation. If any work identified for performance in the United States is moved to another country, such action may be deemed a breach of the contract.

2.7 SCHEDULE OF WORK

Any work performed on State premises shall be done during the hours designated by the State and performed in a manner that does not interfere with the State and its personnel.

2.8 WARRANTIES FOR SUPPLIES AND SERVICES

- 2.8.1** Vendor warrants that the supplies furnished under this Contract (a) will conform to the State's manufacturing standards, specifications, drawing, samples or descriptions furnished by the State, including but not limited to all specifications attached as exhibits hereto, (b) will be merchantable, of good quality and workmanship, free from defects for a period of twelve months or longer if specified in writing, and fit and sufficient for the intended use (c) will comply with all federal and state laws, regulations and ordinances pertaining to the manufacturing, packing, labeling, sale and delivery of the supplies (d) will be of good title and be free and clear of all liens and encumbrances and (e) will not infringe any patent, copyright or other intellectual property rights of any third party. Vendor agrees to reimburse the State for any losses, costs, damages or expenses, including without limitations, reasonable attorney's fees and expenses, arising from failure of the supplies to meet such warranties. These warranties shall be in addition to all other warranties, express, implied or statutory, and shall survive the State's payment, acceptance, inspection or failure to inspect the supplies.
- 2.8.2** Vendor warrants that all services will be performed in a good and professional manner to industry standards by trained and competent personnel. Vendor shall monitor performances of each individual and shall reassign immediately any individual who is not performing to professional standards, who is not efficient or effective in performing the work of the contract, who is disruptive or not respectful of others in the workplace, or who in any way violates the Contract or State policies.

2.9 REPORTING, STATUS AND MONITORING SPECIFICATIONS

- 2.9.1** Vendor shall immediately notify the State of any event that may have a material impact on Vendor's ability to perform the Contract.
- 2.9.2** Upon request and on forms provided by Agency, Vendor shall report the number of qualified veterans and certain ex-offenders hired during Vendor's last completed fiscal year. Vendor may be entitled to employment tax credit for hiring individuals in those groups (PA 94-1067).
- 2.9.3** Vendors are responsible for the faithful performance of the contract and shall have internal monitoring procedures and processes to ensure compliance.

- 2.9.4 The State reserves the right to monitor and track Vendor's performance over the course of the contract including any warranty term. The information gathered may be used in administration of the contract including payment, and may be used when evaluating the vendor in future procurements.
- 2.9.5 In appropriate circumstances, the State and the Vendor will work together to develop a performance scorecard with conditions, milestones, requirements, or timetables that must be met before additional steps may be taken, or payment is due. The scorecard may additionally record matters related to price, service, quality and other factors deemed important.
- 2.9.6 The Vendor shall cooperate with the State in this monitoring and tracking activity, which may require that vendor report progress and problems (with proposed resolutions), provide records of its performance, allow random inspections of its facilities, participate in scheduled meetings and provide management reports as requested by the State.
- 2.9.7 The State expects to have quality vendors who are willing to work with us during the term of the contract to provide us with better quality at the same price, or to provide the same quality at a lower price. We may consider, in future procurement evaluations, a vendor that successfully provides better quality or price.

2.10 BREACH

Should Vendor breach the Contract and not cure any breach susceptible of being cured within the time specified by the State, the State may cancel the Contract and seek any available legal or equitable remedies, including but not limited to monetary damages and reasonable attorney fees and costs.

2.11 OTHER SPECIFICATIONS

N/A

3. **PRICING**

3.1 **METHOD AND RATE OF COMPENSATION**

Vendor shall be compensated by the following method:

- ☒ hourly _____
☐ monthly _____
☐ annually _____
☐ project _____
☐ item _____

3.2 **MAXIMUM COMPENSATION FOR SUPPLIES AND SERVICES**

- ☒ Firm Price \$448,400 per year _____
☐ Estimated Price _____

3.3 **RENEWAL COMPENSATION**

N/A

3.4 **EXPENSES**

This Contract does not allow for reimbursement of any expense incurred by Vendor, including but not limited to telephone or other communications device, postage, copying, travel, transportation, lodging, food and per diem. Any approved travel expenses shall be reimbursed in accordance with the Travel Regulation Council and Governor's Travel Board rules.

3.5 **DISCOUNT**

N/A% discount for payment within N/A days of receipt of invoice

3.6 **TAX**

Vendor shall not bill for any taxes unless accompanied by proof the State is subject to the tax. If necessary, Vendor may request the applicable Agency/Buyer's Illinois tax exemption number and federal tax exemption information.

3.7 **INVOICING**

Vendor shall invoice as specified in Section 3.8. In addition, the Vendor shall separately track the time spent and separately account for the fees and costs associated with each utility's procurement process. For time spent, including fees and costs, that cannot be directly attributed to Ameren or ComEd, Agency/Buyer shall designate allocation percentages, and the initial allocation percentages shall be 70% ComEd and 30% Ameren.

3.8 **PAYMENT TERMS AND CONDITIONS**

3.8.1 Ameren and Commonwealth Edison have agreed to pay for Vendor services involved in this Contract. However, in all matters related to this project, the Agency shall be the sole client of Vendor. Vendor invoices will be submitted to Agency Project Manager for review and approval. An invoice for payment may be submitted at any time following the month's end, for any month in which work was performed or expenses were incurred. After Agency Project Manager approval, Agency will coordinate payment to Vendor as follows:

3.8.1.1 **PROFESSIONAL FEES.** The compensation of professional fees for this project shall be tied to the accomplishment of specific milestones and steps in the current approved project plan as outlined in paragraph 2.4 above. Vendor shall submit an invoice to the Project Manager. Professional fees are subject to 20% retainage as described in paragraph 3.8.2, below. Each invoice shall be of sufficient detail to relate the costs therein to the work performed, by individual, to the approved preliminary or detailed work plans or a specific milestone submitted by VENDOR and approved by Staff.

3.8.1.2 **EXPENSES.** Expenses are to be included in the hourly rates that make up the compensation described above in section 3.2.

3.8.2 Retainage shall be accounted for separately for each fiscal year ending June 30. Twenty percent (20%) of all Agency approved professional fees will be retained until satisfactory completion of Vendor's contractual obligations through June 30 of each year. Retainage will be released each year, if and when all contractual obligations through June 30 of each year within the control of the Vendor have been fulfilled.

3.8.3 By submitting an invoice, Vendor certifies that the supplies or services provided meet all requirements of the Contract, and the amount billed and expenses incurred are as allowed in the Contract. Invoices for supplies purchased, services performed and expenses incurred through June 30 of any year must be submitted to the State no later than July 31 of that year; otherwise Vendor may have to seek payment through the Illinois Court of Claims (30 ILCS 105/25).

- 3.8.4 Payments, including late payment charges, will be paid in accordance with the State "Prompt Payment Act" (30 ILCS 540) and rules (74 Ill. Adm. Code 900) when applicable. Payments delayed at the beginning of the State's fiscal year (July and August payments) because of the appropriation process shall not be considered a breach.
- 3.8.5 The State shall not be liable to pay for supplies provided or services rendered, including related expenses incurred prior to the execution of this Contract by the Parties and the beginning of the term of this Contract.
- 3.8.6 As a condition of receiving payment Vendor must pay its employees prevailing wages when required by law (e.g., public works, printing, janitorial, window washing, building and grounds services, site technician services, natural resource services, security guard and food services). Vendor is responsible for contacting the Illinois Dept. of Labor (217-782-6206; <http://www.state.il.us/agency/idol/index.htm>) to ensure understanding of prevailing wage requirements (30 ILCS 500/25-60(b)).
- 3.8.7 As a condition of receiving payment Vendor must pay its suppliers and subcontractors according to the terms of their respective contracts. Vendor shall provide lien waivers to the State upon request.

4. STANDARD TERMS AND CONDITIONS

4.1 AVAILABILITY OF APPROPRIATION (30 ILCS 500/20-60)

State shall use its best efforts to secure sufficient appropriations to fund this Contract. However, the State, at its sole option, may terminate or suspend this contract, in whole or in part, without penalty or further payment being required, if the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason.

4.2 AUDIT/RETENTION OF RECORDS (30 ILCS 500/20-65)

Vendor and its subcontractors shall maintain books and records relating to the performance of the Contract or subcontract and necessary to support amounts charged to the State under the Contract or subcontract. Books and records, including information stored in databases or other computer systems, shall be maintained by the Vendor for a period of three years from the later of the date of final payment under the Contract or completion of the Contract, and by the subcontractor for a period of three years from the later of final payment under the term or during the three year period thereafter. Books and records required to be maintained under this section shall be available for review or audit by representatives of the State, the Auditor General, the Executive Inspector General and other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. Vendor and its subcontractors shall cooperate fully with any such audit and with any investigation conducted by any of these entities. Failure to maintain books and records required by this section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the Contract for which adequate books and records are not available to support the purported disbursement. The Vendor shall not impose a charge for audit or examination of the Vendor's books and records. If federal funds are used to pay contract costs, the Vendor must retain its records for five years. Vendor shall take reasonable steps to insure that any subcontractor is in compliance with the requirements of this section.

4.3 TIME IS OF THE ESSENCE

Time is of the essence with respect to Vendor's performance of this Contract. Except as specifically waived in writing, failure by either Party to exercise or enforce a right shall not affect any subsequent ability to exercise or enforce a right.

4.4 FORCE MAJEURE

Failure by either Party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control and not due to its negligence including acts of nature, acts of terrorism, riots, labor disputes, fire, flood, explosion, and governmental prohibition. The non-declaring party may cancel the Contract without penalty if performance does not resume within 30 days of the declaration.

4.5 CONFIDENTIAL INFORMATION

Each Party, including its agents and subcontractors, to this Contract may have or gain access to confidential data or information owned or maintained by the other Party in the course of carrying out its responsibilities under this Contract. The receiving Party shall presume all information received or to which it gains access pursuant to this Contract is confidential unless otherwise designated by the disclosing Party. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the disclosing Party, either during the period of the Contract or thereafter. The receiving Party must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the end of the Contract, or earlier at the request of the disclosing Party, or notify the disclosing Party in writing of its destruction. The foregoing obligations shall not apply to confidential data or information lawfully in the receiving Party's possession prior to its acquisition from the disclosing Party; received in good faith from a third-party not subject to any confidentiality obligation to the disclosing Party; now is or later becomes publicly known through no breach of confidentiality obligation by the receiving Party; or is independently developed by the receiving Party without the use or benefit of the disclosing Party's confidential information.

4.6 USE AND OWNERSHIP

All work performed or supplies created by Vendor under this Contract, whether written documents or data, goods or deliverables of any kind, shall be deemed work-for-hire under copyright law and all intellectual property and other laws, and the State of Illinois is granted sole and exclusive ownership to all such work, unless otherwise agreed to herein. Vendor hereby assigns to the State all right, title, and interest in and to such work including any related intellectual property rights, and/or waives any and all claims that Vendor may have to such work including any so-called "moral rights" in connection with the work. Confidential data or information contained in such work shall be subject to Section 4.5 herein.

4.7 INDEMNIFICATION AND LIABILITY

The Vendor agrees to indemnify and hold harmless the State of Illinois, its agencies, officers, employees, agents and volunteers from any and all costs, demands, expenses, losses, claims, damages, liabilities, settlements and judgments, including in-house and contracted attorneys' fees and expenses, arising out of (a) any breach or violation by Vendor of any of its representations, warranties, covenants or agreements set forth herein, (b) any actual or alleged death or injury to any person, damage to any property or any other damage or loss by whomsoever suffered, claimed to result in whole or in part from vendor's negligent performance hereunder, (c) any act, activity or omission of Vendor or any of its employees, representatives, subcontractors or agents. Neither party shall be liable for incidental, special, consequential or punitive damages.

4.8 INSURANCE

Vendor shall, at all times during the term and any renewals, maintain and provide a Certificate of Insurance naming the State as additional insured for all required bonds and insurance. Certificates may not be modified or canceled until at least 30 days notice has been provided to the State. Vendor shall provide: (a) General Commercial Liability-occurrence form in amount of \$1,000,000 per occurrence (Combined Single Limit Bodily Injury and Property Damage) and \$2,000,000 Annual Aggregate; (b) Auto Liability, including Hired Auto and Non-owned Auto, (Combined Single Limit Bodily Injury and Property Damage) in amount of \$1,000,000 per occurrence; and (c) Worker's Compensation Insurance in amount required by law. Insurance shall not limit Vendor's obligation to indemnify, defend, or settle any claims.

4.9 INDEPENDENT CONTRACTOR

Vendor shall, in the performance of this Contract, be an independent contractor and not an agent or employee of, or joint venturer with the State. All payments by the State shall be made on that basis.

4.10 ASSIGNMENT AND SUBCONTRACTING

This Contract may not be assigned, transferred or subcontracted in whole or in part by the Vendor without the prior written consent of the State. Vendor shall describe, as a supplemental provision to this Contract, the names and addresses of all authorized subcontractors utilized by Vendor in the performance of this Contract, together with a description of the work to be performed by the subcontractor and the anticipated amount of money that each subcontractor is expected to receive pursuant to this Contract. For purposes of this section, subcontractors are those specifically hired to perform all or part of the work or to provide the supplies covered by the Contract.

4.11 SOLICITATION AND EMPLOYMENT

Vendor shall not employ any person employed by the State during the term of this Contract to perform any work under this Contract. Vendor shall give notice immediately to the Agency/Buyer's director if Vendor solicits or intends to solicit State employees to perform any work under this Contract.

4.12 COMPLIANCE WITH THE LAW

The Vendor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders, federal circulars and all license and permit requirements in the performance of this Contract. Vendor shall be in compliance with applicable tax requirements and shall be current in payment of such taxes.

4.13 BACKGROUND CHECK

Whenever the State deems it reasonably necessary for security reasons, the State may conduct, at its expense, criminal and driver history background checks of Vendor's officers, employees or agents. Vendor shall reassign immediately any such individual who does not pass the background checks.

4.14 APPLICABLE LAW

This Contract shall be construed in accordance with and is subject to the laws and rules of the State of Illinois. The Department of Human Rights' Equal Opportunity requirements (44 Ill. Adm. Code 750) are incorporated by reference. Any claim against the State arising out of this Contract must be filed exclusively with the Illinois Court of Claims (705 ILCS 505/1). The State shall not enter into binding arbitration to resolve any Contract dispute. The State of Illinois does not waive sovereign immunity by entering into this Contract. The official text of cited statutes is incorporated by reference (An unofficial version can be viewed at <http://www.ilga.gov/legislation/ilcs/ilcs.asp>. In compliance with the Illinois and federal Constitutions, the Illinois Human Rights Act, the U. S. Civil Rights Act, and Section 504 of the federal Rehabilitation Act and other applicable laws and rules the State does not unlawfully discriminate in employment, contracts, or any other activity.

4.15 ANTI-TRUST ASSIGNMENT

If Vendor does not pursue any claim and cause of action it has arising under federal or state antitrust laws relating to the subject matter of the Contract, then upon request Vendor shall assign to the State all right, title and interest in and to the claim or cause of action.

4.16 AUTHORIZATION

Each Party to this Contract represents and warrants to the other that: (a) it has the right, power and authority to enter into and perform its obligations under this Contract and (b) it has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and (c) this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

4.17 CONTRACTUAL AUTHORITY

The Agency/Buyer that signs for the State of Illinois shall be the only State entity responsible for performance and payment under the Contract. When the Department of Central Management Services (CMS) signs in addition to an Agency/Buyer, CMS does so as approving officer and shall have no liability to Vendor. When CMS signs a Master Contract on behalf of State agencies, only the Agency/Buyer that places an order with the Vendor shall have any liability to Vendor.

4.18 NOTICES

Notices and other communications provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by courier (UPS, Federal Express or other similar and reliable carrier), by e-mail, or by fax showing the date and time of successful receipt. Notices shall be sent to the individuals who signed the Contract using the contact information following the signatures. Each such notice shall be deemed to have been provided at the time it is actually received. By giving notice, either Party may change the contact information.

5. CERTIFICATIONS AND CONFLICTS

Vendor certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:

- 5.1 Vendor, its employees and subcontractors will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Contract.
- 5.2 Vendor is not in default on an educational loan (5 ILCS 385/3).
- 5.3 Vendor has informed the director of the Agency/Buyer in writing if he/she was formerly employed by that agency and has received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, and acknowledges that contracts made without the appropriate filing with the Auditor General are not payable from the "contractual services" or other appropriation line items. Vendor has not received an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, and acknowledges that contracts in violation of Section 15a of the State Finance Act are not payable from the "contractual services" or other appropriation line items (30 ILCS 105/15a).
- 5.4 Vendor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or offer, and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit performing substantially similar work that will be performed under this contract (30 ILCS 500/25-80).
- 5.5 Vendor has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor has Vendor made an admission of guilt of such conduct that is a matter of record (30 ILCS 500/50-5).
- 5.6 If Vendor has been convicted of a felony, at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business (30 ILCS 500/50-10).
- 5.7 If Vendor, or any officer, director, partner, or other managerial agent of Vendor, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the State shall declare the Contract void if this certification is false (30 ILCS 500/50-10.5).
- 5.8 Vendor and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and Vendor and its affiliates acknowledge the State may declare the Contract void if this certification is false (30 ILCS 500/50-11) or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt (30 ILCS 500/50-60).
- 5.9 Vendor and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act (30 ILCS 500/50-12) and acknowledges that failure to comply can result in the Contract being declared void.
- 5.10 Vendor certifies that it has not committed a willful or knowing violation of the Environmental Protection Act (relating to Civil Penalties under the Environmental Protection Act) within the last five years, and is therefore not barred from being awarded a contract. If the State later determines that this certification was falsely made by the Vendor, the Vendor acknowledges that the State may declare the Contract void (30 ILCS 500/50-14).
- 5.11 Vendor has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has Vendor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract (30 ILCS 500/50-25).
- 5.12 Vendor is not in violation of the "Revolving Door" section of the Illinois Procurement Code (30 ILCS 500/50-30).
- 5.13 Vendor will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers or employees of the State (30 ILCS 500/50-40, 50-45, 50-50).
- 5.14 In accordance with the Steel Products Procurement Act, steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring agency grants an exception (30 ILCS 565).
- 5.15 Vendor will, pursuant to the Drug Free Workplace Act, provide a drug free workplace and Vendor and its employees shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance during the performance of the Contract. This certification applies to contracts of \$5000 or more with individuals; and to entities with 25 or more employees (30 ILCS 580).

- 5.16 Neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This certification applies to contracts that exceed \$10,000 (30 ILCS 582).
- 5.17 Vendor has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States (720 ILCS 5/33 E-3, E-4).
- 5.18 Vendor complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
- 5.19 Vendor does not pay dues to, or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club" (775 ILCS 25/2).
- 5.20 Vendor complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the Contract have been or will be produced in whole or in part by forced labor, or indentured labor under penal sanction (30 ILCS 583).
- 5.21 Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the Contract have been produced in whole or in part by the labor or any child under the age of 12 (30 ILCS 584).
- 5.22 Vendor certifies that it is not in violation of Section 50-14.5 of the Illinois Procurement Code (30 ILCS 500/50-14.5) that states: "Owners of residential buildings who have committed a willful or knowing violation of the Lead Poisoning Prevention Act (410 ILCS 45) are prohibited from doing business with the State until the violation is mitigated".
- 5.23 Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with **Executive Order No. 1 (2007)**. The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
- 5.24 Vendor has disclosed if required, on forms provided by the State, and agrees it is under a continuing obligation to disclose to the State, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest or which would prohibit Vendor from having or continuing the Contract. This includes, but is not limited to conflicts under the "Infrastructure Task Force Fee Prohibition" section of the State Finance Act (30 ILCS 105/8.40), Article 50 of the Illinois Procurement Code (30 ILCS 500/50), or those which may conflict in any manner with the Vendor's obligation under this Contract. Vendor shall not employ any person with a conflict to perform under this Contract. If any elected or appointed State officer or employee, or the spouse or minor child of same has any ownership or financial interest in the Vendor or the Contract, Vendor certifies it has disclosed that information to the State if required, on forms provided by the State, and any waiver of the conflict has been issued in accordance with applicable law and rule. A waiver is required if:
- 5.24.1 the person intending to contract with the State, their spouse or child: (i) holds an elective office in Illinois; (ii) holds a seat in the Illinois General Assembly; (iii) is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority; or holds an appointed position or is employed in any of the offices or agencies of the State government and who receives compensation for such employment in excess of 60% of the salary of the Governor (**currently \$90,414.60**). (The conflict of interest threshold of 60% of the Governor's salary set forth in Section 50-13 does not apply to elective office holders, legislators, and officers or employees of the Capital Development Board or the Illinois Toll Highway Authority.);
- 5.24.2 the contract is with a firm, partnership, association or corporation in which a person referenced in 5.24.1 above receives more than 7.5% of the total distributable income or an amount in excess of the salary of the Governor (**currently \$150,691.00**).
- 5.24.3 the contract is with a firm, partnership, association or corporation in which a person referenced in 5.24.1 above, together with their spouse or minor child, receives more than 15% in the aggregate of the total distributable income or an amount in excess of 2 times the salary of the Governor (**currently \$301,382.00**) from the firm, partnership, association or corporation.